

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**AUGUSTUS SIMMONS,**  
**Plaintiff,**

**v.**

**ROBERT GILMORE, et al.,**  
**Defendants.**

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**C.A. No. 17-996 Pittsburgh**

**District Judge Susan Paradise Baxter  
Magistrate Judge Richard A. Lanzillo**

**MEMORANDUM ORDER**

This prisoner civil rights action was received by the Clerk of Court on August 2, 2017 and was referred to the undersigned, then a United States Magistrate Judge, for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. On January 18, 2018, Defendants filed a partial motion to dismiss complaint for failure to state a claim [ECF Nos. 21], to which Plaintiff filed a response and brief in opposition on April 19, 2018 [ECF Nos. 29, 30].

On September 14, 2018, the undersigned was sworn in as a United States District Judge. This action was reassigned to the undersigned, as presiding judge, on September 17, 2018, and was subsequently referred to United States Magistrate Judge Richard A. Lanzillo for all pretrial proceedings on September 27, 2018.

On October 31, 2018, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation ("R&R") recommending that Defendants' partial motion to dismiss be granted. [ECF No. 40]. On November 23, 2018, Plaintiff filed Objections to the R&R [ECF No. 44], in which he essentially reiterates, and expands upon, the same arguments raised in his brief in

opposition to Defendants' motions to dismiss. Plaintiff attached several pages of exhibits to his Objections, some of which had not previously been before the Court. See ECF Nos. 44-1 – 44-3, 44-7 – 44-9, and 44-11 – 44-12. It is procedurally inappropriate to introduce new evidence in support of Objections because these materials were not before the Magistrate Judge making the recommendation. For this reason, these exhibits will not be considered.

After *de novo* review of the complaint and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 26th day of March, 2019;

IT IS HEREBY ORDERED that Defendants' partial motion to dismiss [ECF No. 21] is GRANTED, as follows:

1. The First Amendment retaliation claim and the RLUIPA claim at Count II are DISMISSED, without prejudice, against Defendants Albonde, Zaken, and Gilmore. **Plaintiff is allowed to amend his complaint to more clearly define such claims by April 15, 2019;**
2. Count IV is DISMISSED, with prejudice, against Defendants Zaken, Leggett, Longstreth, Gilmore, Shawley, and Smith;
3. Count V is DISMISSED, with prejudice, against Defendants Benner, Himes, and Dupont;
4. Count VI is DISMISSED, with prejudice, against Defendants Gilmore, Zaken, Leggett, Smith, Shrader, Kennedy, Longstreth, Younkin, Varner, Dupont, Shawley, and Benner; and
5. The Eighth Amendment sexual harassment claim at Count VII against Defendants Carter and Imhof is DISMISSED, with prejudice.

The report and recommendation of Magistrate Judge Lanzillo, issued October 31, 2018 [ECF No. 40], is adopted as the opinion of the court.

*Susan Paradise Baxter*

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SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
U.S. Magistrate Judge